

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 9450 of 2000****For Approval and Signature:****HON'BLE MR JUSTICE KS JHAVERI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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GSRTC - Petitioner(s)
Versus
SATTARBHAI VOHRA - Respondent(s)

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Appearance :

MR HS MUNSHAW for Petitioner No(s).: 1.
MR GK RATHOD for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI
Date : 02/08/2005

ORAL JUDGMENT

1. This petition is directed against the judgment and award dated 16th March, 2000 passed by the Labour Court, Nadiad in Reference [L.C.N.] No. 264/96, whereby the Labour Court has directed the petitioner Corporation to grant 75% back wages from the date of his termination

till the date of his retirement and further shall pay all the retirement benefits.

2. The short facts of the case are that the respondent was working as a Traffic Controller with the petitioner Corporation. The respondent though had taken L.T.C., for the block period 1993-94, did not utilize the said amount for the purpose of the L.T.C., and thereby had misappropriated the amount of the petitioner Corporation. Therefore, charge sheet was issued and departmental inquiry was initiated against the respondent. Since the charges levelled against the respondent were proved, a show cause notice was issued and thereafter he was dismissed from the service w.e.f. 19th January, 1996.

2.1. Being aggrieved by the said order of dismissal, the respondent raised an industrial dispute which was ultimately referred to the Labour Court, Nadiad for adjudication. The Labour Court after appreciating the materials produced before it, passed the impugned award. Hence, this petition.

3. I have heard the learned counsel for the parties

and have perused the materials produced on record. From the impugned award, it appears that the Labour Court while awarding back wages has proceeded on the footing that since the respondent has attained the age of superannuation, he is entitled for the back wages from the date of termination till the date of his retirement.

3.1. However, in view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J., p.176, a workman has no automatic entitlement to back wages. Since, it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case.

3.2. In the case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C. P. 137, it has been held that an order for payment of back wages should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. Hence, the impugned award is required to be quashed and set aside.

4. However, while exercising powers under Section 11(A) of the Industrial Disputes Act, 1947 the Labour

Court has not imposed any penalty. While substituting the order of dismissal, the Labour Court ought to have imposed some penalty on the respondent. Looking to the charges proved against the respondent, I am of the opinion that a penalty of stoppage of three increments with future effect is required to be imposed on the respondent.

5. In the result, the petition is allowed. The award dated 16th March, 2000 passed by the Labour Court, Nadiad in Reference [L.C.N.] No. 264/96 is quashed and set aside. Further a penalty of stoppage of three increments with future effect is imposed on the respondent. It is clarified that the respondent shall be paid all the consequential benefits from the date of publication of the award till the date of his retirement after the aforesaid penalty has been imposed. The said benefits shall be paid within a period of three months from the date of receipt of writ of this Court. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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